



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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ADVANCE MATERIALS PRODUCTS, INC.
1890 GEORGETOWN ROAD
HUDSON, OH 44236

COPY MAILED

JUL 03 2006

OFFICE OF PETITIONS

In re Application of
Moxson et al.

Application No. 10/748,619

Filing Date: December 27, 2003

For: FULLY-DENSE DISCONTINUOUSLY-
REINFORCED TITANIUM MATRIX
COMPOSITES AND METHOD FOR
MANUFACTURING THE SAME

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:
:

Decision on Petition

This is a decision on the petition filed March 8, 2005, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." If petitioners file a petition to revive under 37 CFR 1.137(a) or 1.137(b), the cover letter should be entitled accordingly. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The application was filed December 27, 2003.

The application indicated all correspondence should be mailed to:

ADMA Products, Inc.
8180 Boyle Parkway
Twinsburg, OH 44087

The filing fee due for the application was \$385. Petitioner only submitted \$370.

Petitioners recorded an assignment on March 10, 2004. Petitioners indicated all correspondence related to the assignment should be mailed to:

ADMA Products, Inc.
Vladimir S. Moxson, President
8180 Boyle Parkway
Twinsburg, OH 44087

A Notice to File Missing Parts was mailed to the address of record on April 13, 2004. The Notice stated petitioner owed an additional \$15 for the filing fee and \$65 for the surcharge required when a filing fee is paid in full on a date after the filing date for the application. The Notice set an extendable period for reply of two (2) months from the mail date of the Notice.

Petitioners failed to reply to the Notice to File Missing Parts. As a result, the application became abandoned on midnight of June 13, 2004.

Petitioners have supplied a copy of a letter allegedly mailed on September 8, 2004, requesting assignment division change its address for the application to:

1890 Georgetown Road
Hudson, OH 44236

The letter was mailed to an improper address. On September 8, 2004, the correct mailing address for Patent and Trademark Office was:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The address on the letter was *never* a correct address for the Patent and Trademark Office. The letter to the Office was addressed to:

Ms. Diane Russele, Paralegal
U.S. Patent and Trademark Office
Assignment Division
Box Assignments, CG-4
1213 Jefferson Davis HWY
Suite 320
Washington, DC 20231

The address above is a combination of the physical address for the USPTO and the mailing address. The address instructed the USPS to deliver the mail to "1213 Jefferson Davis HWY, Suite 320" which was an address located in Arlington, Virginia. However, the letter stated the address was located in Washington, DC. Office records fail to indicate receipt of the September 8, 2004 letter.

It is noted that the September 8, 2004 change of correspondence address is signed by Dr. Vladimir S. Moxson, President of ADMA Products, Inc.. The required 373(b) statement did not accompany the change of correspondence address.

A Notice of Abandonment was mailed to the "Boyle Parkway" address on January 10, 2005. Although the Notice of Abandonment was mailed to the old address, petitioners appear to have received the Notice on or before January 30, 2005.

The instant petition was filed March 8, 2005.

Petitioners have not alleged a request to change the correspondence address was filed on or before April 13, 2004. Therefore, the Office properly mailed the Notice to File Missing Parts to the then-current correspondence address of record on April 13, 2004.

Petitioners state,

[W]e did not receive [the Notice] mailed on 04/13/2004. This Notice to File Missing Parts was received by our request only 01/27/05.

Petitioners have stated that the April 13, 2004 Notice was mailed to the "old address." As stated above, the "Boyle Parkway" address was the correspondence address of record when the April 13, 2004 Notice was mailed. Put simply, the September 8, 2004 flawed change of correspondence address was filed after the April 13, 2004 Notice was mailed.

A review of the record indicates no irregularity in the mailing of the April 13, 2004 Notice, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicants at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received at the correspondence address of record.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

The showing in the instant petition is not sufficient to withdraw the holding of abandonment because it does not meet requirements 1 and 2 above. In addition, petitioners must provide a statement for the record that ADMA Products, Inc.'s address was the "Boyle Parkway" address on April 13, 2004, when the Notice was mailed.

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The petition is dismissed and the application remains abandoned.

Petitioners are informed that on December 8, 2004, the basic filing fee increased by \$10.00. Therefore, petitioners owe an additional \$10.00. This amount must be submitted with any follow-up petition.

If petitioners are unable to provide the required evidence to prove non-receipt and obtain a withdrawal of the holding of abandonment, petitioners may wish to consider filing a petition to revive under 37 CFR 1.137(a) – the unavoidable standard – or 37 CFR 1.137(b) – the unintentional standard.

Please keep in mind that a delay caused by the failure on the part of an applicant to provide the Office with a current correspondence address does not constitute an unavoidable delay. See Ray v. Lehman, 55 F.3d 606, 34 USPQ2d 1786 (Fed. Cir. 1995). A change of address must be made in a conspicuous manner. The Office will not change the correspondence address of record based on the fact that an address on a check or on letterhead is different from the correspondence address of record. A specific request by a proper party must be submitted.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (\$10.00 balance due on the filing fee), the required petition fee (\$ 750.00 for a small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. A copy of a blank petition form PTO/SB/64 is enclosed for petitioners' convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to the undersigned at (571) 272-3230.

A handwritten signature in cursive script, reading "Shirene Willis Brantley".

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: blank form PTO/SB/64- PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR
1.137(b)

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

First named inventor:

Application No.:

Art Unit:

Filed:

Examiner:

Title:

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____ (identify type of reply):

- ☐ has been filed previously on _____.
- ☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature_____
Date_____
Typed or printed name_____
Registration Number, if applicable_____
Address_____
Telephone Number_____
AddressEnclosures: ☐ Fee Payment☐ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☐ Other: _____**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300._____
Date_____
Signature_____
Typed or printed name of person signing certificate

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.